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*Counsel for Ally Financial, Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

)  
) Case No. 12-12020 (MG)  
)  
) Chapter 11  
)  
) Jointly Administered  
)  
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**DECLARATION OF JONATHAN D. JANOW IN SUPPORT OF ALLY FINANCIAL,  
INC'S OMNIBUS REPLY TO THE OBJECTIONS TO THE DEBTORS' SECOND  
SUPPLEMENTAL MOTION PURSUANT TO THE FED. R. BANKR. P. 9019 FOR  
APPROVAL OF THE RMBS TRUST SETTLEMENT AGREEMENTS**

I, JONATHAN D. JANOW, hereby declare, pursuant to 28 U.S.C. § 1746, that the  
following is true and correct:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel to Ally  
Financial, Inc. ("Ally") in the chapter 11 cases of the above captioned matter. I respectfully  
submit this declaration in support of Ally's Omnibus Reply to the Objections to the Debtors'  
Second Supplemental Motion Pursuant to the Fed. R. Bankr. P. 9019 for the Approval of the  
RMBS Trust Settlement Agreements.

2. Attached to my Declaration are the following Exhibits in support of Ally's reply.

EXHIBIT	DESCRIPTION OF EXHIBIT
A	Excerpts from the Deposition Testimony of Thomas Marano, dated November 12, 2012.
B	Excerpts from the Deposition Testimony of James Whitlinger, dated November 15, 2012.
C	Excerpts from the Deposition Testimony of Mark Renzi, dated November 7, 2012.
D	Excerpts from the Deposition Testimony of John Ruckdaschel, dated November 8, 2012.
E	Excerpts from the Deposition Testimony of Tammy Hamzehpour, dated November 13, 2012
F	Excerpts from the Deposition Testimony of Timothy Devine, dated November 19, 2012
G	Excerpts from the Deposition Testimony of John Mack, dated November 14, 2012.
H	Email dated May 7, 2012 from Timothy Devine to Mark Renzi, Gary Lee, Tammy Hamzehpour and others. <i>See</i> <b>Ex. 9019-41</b> .

Dated: January 15, 2013  
Washington, D.C.

/s/ Jonathan D. Janow  
Jonathan D. Janow

## **Exhibit A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No.  
RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)  
Debtors.

-----x

H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF THOMAS MARANO

New York, New York

November 12, 2012

9:56 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27645

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. What I told Carpenter was it  
3 would take a lot more than 750 million to  
4 get a quick resolution. Doesn't mean it  
5 was fair for it to be a 2 billion charge  
6 to Ally; 750 was fair. But people are  
7 going to want more.

8 Q. What made you think that 750 was  
9 the top dollar you were going to be able  
10 to get from AFI?

11 A. The -- I relied on the  
12 independent directors who, you know, spent  
13 weeks, if not months, negotiating with  
14 Carpenter; and they told us this was the  
15 best deal they could get. And we looked  
16 at what the legal professionals said were  
17 valid claims, and we concluded at the  
18 board meeting this was fair.

19 Q. Based on a two-page presentation  
20 you got 22 minutes before, in an hour  
21 meeting?

22 MR. PRINCI: Objection, that's  
23 just argumentative. Is there a  
24 question? Excuse me, is there a  
25 question?

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. Sure.

3 Q. That was what you testified  
4 about earlier?

5 A. Yes.

6 Q. You would reach out to  
7 Mr. Carpenter or you would have discussed  
8 the solvency and liquidity situation of  
9 ResCap with Mr. Carpenter?

10 A. Correct.

11 Q. Earlier in your testimony today  
12 you testified that Mr. Ilany and Mr. Mack  
13 from ResCap's board were responsible for  
14 engaging with Ally Financial in the  
15 negotiations with respect to a settlement  
16 with Ally. Do you recall that testimony?

17 A. Yes.

18 Q. Okay. Were you kept up to date  
19 on the status of negotiations with Ally?

20 A. Not in detail. Periodically I'd  
21 be posted as to what was going on but I  
22 was not informed of the details in a way  
23 that I could tell you the blow-by-blow  
24 descriptions.

25 Q. Understood. Who would provide

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 you those updates?

3 A. I would receive those updates  
4 from either Mr. Mack or Mr. Ilany but they  
5 would be of a nature of we are talking to  
6 Carpenter.

7 Q. Did you ever tell Mr. Ilany or  
8 Mr. Mack that you thought \$2 billion was a  
9 reasonable number to settle with Ally  
10 Financial?

11 A. Again, just to make sure the  
12 record is clear, I communicated to many  
13 people that I thought that we would not be  
14 able to settle with the bondholders or buy  
15 their peace for less than \$2 billion.  
16 That wasn't necessarily based on the  
17 merits of the claims in the end when the  
18 work was completed.

19 Q. I understand but did you tell  
20 Mr. Ilany and Mr. Mack that you thought \$2  
21 billion was a reasonable number?

22 MR. PRINCI: Objection. Asked  
23 and answered.

24 You can answer it again.

25 A. They knew my views.

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Q. So they knew?

3 A. (Witness nods.)

4 Q. What was the initial ask by  
5 ResCap's board to Ally in connection with  
6 the Ally set of negotiations?

7 MR. PRINCI: Objection to form.

8 You can answer the question if  
9 you wish to.

10 A. I don't actually recall but it  
11 was a really big number. It was much  
12 bigger than \$2 billion.

13 Q. Was it \$3 billion?

14 A. You know, if I recalled the  
15 exact number, it was very big. Ally's  
16 reaction was NFW, we'd rather litigate.

17 Q. Do you recall if it was more  
18 than \$10 billion?

19 A. No, I don't think it was over 10  
20 billion.

21 Q. Do you recall if it was more  
22 than 5 billion?

23 A. I would say, you know, it had to  
24 be somewhere south of 5. I just don't --  
25 I don't recall the exact number.



1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Q. Okay. So somewhere above 2 but  
3 south of 5?

4 MR. PRINCI: Objection. That's  
5 not his testimony.

6 A. I don't recall the exact number.

7 MR. SIDMAN: Actually, I think  
8 it was but that's fine.

9 Q. I'm going to show you -- again I  
10 apologize if it's been marked previously  
11 not here but some other deposition I'll  
12 mark it has 64. And a copy for counsel.

13 (9019 Exhibit 64, e-mail chain  
14 dated March 16, 2012, Bates  
15 Ally-0226065, marked for  
16 identification, as of this date.)

17 MR. SIDMAN: For the record,  
18 Exhibit 64 is an e-mail chain dated  
19 March 16, 2012, and Bates number is  
20 Ally-0226065.

21 Q. My first question to you,  
22 Mr. Marano, is, do you recall the first  
23 e-mail on the e-mail chain which is an  
24 e-mail from you to Mr. Solomon,  
25 Ms. Hamzephour, cc'ing Mr. Carpenter, sent

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Friday, March 16th, 2012 at 1:47 p.m.?

3 A. Yeah, I do recall this.

4 Q. Okay. Have you had a chance to  
5 look at the e-mail?

6 A. Just give me one second.

7 Q. Let me know when you are ready.

8 A. Yeah, go ahead.

9 Q. So the first e-mail which was  
10 sent from you to Mr. Solomon,  
11 Ms. Hamzephour discusses a tolling  
12 agreement between AFI and ResCap. Do you  
13 see that?

14 A. Yes.

15 Q. And what was the subject matter  
16 of the tolling agreement between AFI and  
17 ResCap?

18 A. We were looking for a tolling  
19 agreement between ResCap and AFI to cover  
20 all causes of actions that ResCap may have  
21 against AFI. So we didn't have the  
22 statute of limitations period expire prior  
23 to reaching a settlement with AFI or a  
24 bankruptcy filing.

25 Q. And what was your understanding

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 of the potential applicable statute of  
3 limitations period that would expire in  
4 March of 2012?

5 MR. PRINCI: Object. If your  
6 understanding of that is based --  
7 comes from communications with  
8 counsel, I'm going to direct you not  
9 to answer the question. If it comes  
10 from a source other than your  
11 communications with counsel, you can  
12 answer the question.

13 A. In the context of this comes  
14 from counsel.

15 Q. Okay.

16 DI MR. PRINCI: I'm going to direct  
17 you not to answer the question.

18 Q. Do you have any -- other than  
19 with your counsel do you have any  
20 understanding as to why the statute of  
21 limitations involved dealt with four years  
22 as opposed to another time frame, 6 years,  
23 2 years, 1 year?

24 MR. PRINCI: Same admonition.

25 MR. SIDMAN: I instructed -- I

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 told him already not to --

3 A. The answer is no.

4 Q. Do you see at the bottom there  
5 that -- you report, second-to-last  
6 paragraph, that the cost of -- the cost to  
7 draft this complaint in the condensed time  
8 period is likely 750,000 to \$1 million.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And who told you that the  
12 cost to draft this complaint in this time  
13 period was likely to be 750,000 to  
14 \$1 million?

15 MR. PRINCI: Can I ask a  
16 question. I have allowed a lot of  
17 questions today that I think really  
18 are the subject of the examiner's  
19 inquiry and ultimately will be the  
20 subject of the examiner's report. And  
21 I think some leeway has to be provided  
22 to everybody here in that regard. But  
23 since you began questioning the  
24 witness I think the entirety of  
25 your -- of your inquiry has been in

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 that field. And now I think you want  
3 to know who told him what the cost of  
4 the complaint would be against Ally.  
5 I just don't understand what this has  
6 to do with the 9019 motion. Could you  
7 edify that for me?

8 MR. SIDMAN: No. But if you are  
9 instructing him not to answer, that's  
10 fine.

11 DI MR. PRINCI: Okay. No, don't  
12 answer.

13 MR. SIDMAN: Okay.

14 MR. PRINCI: Can we take a  
15 break?

16 MR. SIDMAN: Yes.

17 MR. PRINCI: Thanks.

18 THE VIDEOGRAPHER: The time is  
19 4:48 p.m. and we are off the record.

20 (Whereupon, there is a recess in  
21 the proceedings.)

22 THE VIDEOGRAPHER: The time is  
23 4:54 p.m. and we are back on the  
24 record.

25 Q. Good afternoon again,

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Mr. Marano. You testified early that  
3 Mr. Ilany and Mr. Mack were responsible  
4 for the Ally ResCap negotiations, right,  
5 and you also testified earlier that -- I'm  
6 sorry the court reporter can't take down a  
7 head nod. Is that yes or no?

8 A. Yes.

9 Q. You also testified earlier --  
10 backup. You also testified earlier that  
11 another group of people were responsible  
12 for negotiations with Ms. Patrick and  
13 Mr. Franklin's group; is that correct?

14 A. Yes.

15 Q. And who were those people  
16 responsible for negotiations with  
17 Ms. Patrick's group?

18 A. Tammy Hamzephour from general  
19 counsel of ResCap and Gary Lee who was --  
20 who was counsel to ResCap via Morrison &  
21 Foerster.

22 Q. Anyone else responsible for  
23 negotiations with Ms. Patrick?

24 A. In the early stages when  
25 Ms. Patrick's letter first arrived Tim

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Devine had been present but he did not  
3 represent ResCap in that meeting.

4 Q. I understand but my question is  
5 something different. I'm asking you  
6 overall who was responsible for the  
7 negotiations with Ms. Patrick?

8 A. Tammy and Gary Lee.

9 Q. Not Mr. Devine?

10 A. No. Not -- not on behalf of  
11 ResCap, no.

12 Q. I understand but I'm not -- I'm  
13 not making that distinction you are. So  
14 let me ask my question. Who was  
15 responsible for negotiating the RMBS  
16 settlement with Ms. Patrick?

17 MR. PRINCI: Objection. Asked  
18 and answered.

19 You can answer again.

20 A. Tim Devine was there. But Tammy  
21 Hamzephour represented ResCap and Gary  
22 Lee.

23 Q. And who did Mr. Devine  
24 represent?

25 A. Mr. Devine was there as a

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 reasonable or the loss amount was  
3 reasonable.

4 Q. When you were provided updates  
5 or information about the RMBS settlement  
6 negotiations, who provided them to you?

7 A. I would have received the  
8 financial information from Jeff  
9 Cancelliere, Jim Whitlinger may have been  
10 on the calls. And from a legal point of  
11 view I would have gotten updates from  
12 Tammy Hamzephour and Gary Lee.

13 Q. Did you ever discuss strategy  
14 with anyone at Ally Financial with respect  
15 to the RMBS settlement negotiations?

16 A. Early on I did interact with Tim  
17 Devine when we were contracting for Tim's  
18 services from Ally.

19 Q. I'm sorry. You said you  
20 contracting for Tim's services?

21 A. Well, when -- there was a period  
22 of time where there was global functions.  
23 And the entire legal department was under  
24 the global functions of Ally. And then  
25 sometime in 2012 we began to pull those



1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. I believe that, you know, they  
3 would have been working together on this.  
4 I just don't know.

5 Q. So you believe that they were  
6 working together?

7 A. Yeah. I knew Gary was there  
8 watching our interest as was Tammy.

9 Q. But he wasn't the one  
10 negotiating the deal with Ms. Patrick?

11 MR. PRINCI: Objection. That  
12 misstates his testimony.

13 A. Gary was there to represent our  
14 interest. Mr. Devine could talk to  
15 Ms. Patrick until he was blue in the face.  
16 Until we looked at the numbers that she  
17 was proposing versus possible range that  
18 Jeff Cancelliere came up with, there was  
19 going to be no agreement.

20 Q. But you will agree with me that  
21 with respect to at least this e-mail, back  
22 and forth between Mr. Devine and  
23 Ms. Patrick, where numbers were exchanged,  
24 the only people were talking were  
25 Mr. Devine and Ms. Patrick?

## **Exhibit B**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF JAMES WHITLINGER

New York, New York

November 15, 2012

9:39 a.m.

Reported by:

ERICA L. RUGGIERI, RPR

JOB NO: 27649

1 JAMES WHITLINGER

2 as an allowed claim by the institutional  
3 investors?

4 MR. RAINS: Misstates his  
5 testimony.

6 A. I would say that it was  
7 important to know that the 8.7 billion was  
8 the maximum amount claim that could be  
9 brought forth. And you would want to know  
10 what that dollar amount is.

11 Q. Did you know how that  
12 \$8.7 billion number was arrived at?

13 A. Yes.

14 Q. How was it arrived at?

15 A. Through our teams that  
16 negotiated with Kathy Patrick.

17 Q. And when you say -- and who are  
18 the people on the team that negotiated  
19 with Kathy Patrick?

20 A. I wasn't -- wasn't at the  
21 negotiations but Gary Lee and Tammy  
22 Hamzephour were the people that on our  
23 side that were very important to the  
24 process.

25 Q. Do you know whether Mr. Devine

1 JAMES WHITLINGER

2 accept a \$750 million contribution to the  
3 restructure from AFI without first knowing  
4 what the size -- what the settlement  
5 amount would be with the institutional  
6 investors?

7 MR. RAINS: Object to the form  
8 of the question. It's vague and  
9 ambiguous and assumes facts not in  
10 evidence.

11 A. So the first point that I would  
12 make is, is there are two separate things.  
13 The \$8.7 billion locks in based on an  
14 arm's length negotiation that happened  
15 between Kathy Patrick and our side. And  
16 irrespective of a -- of a settlement that  
17 \$8.7 billion would stay.

18 If you're -- you know, this is  
19 my opinion, I probably shouldn't --  
20 shouldn't give opinions but if you are  
21 Kathy Patrick, you would also want to know  
22 what you think your constituents are going  
23 to get through a waterfall analysis. And  
24 so you would want to know what Ally would  
25 want to contribute. But they're two

1 JAMES WHITLINGER

2 separate things. Because if -- if the AFI  
3 agreement, you know, falls apart, we are  
4 still -- we still have \$8.7 billion claim  
5 settled, which we think is a very good  
6 deal based on litigation facts and what  
7 our -- our professionals told us.

8 Q. Can you tell me all the reasons  
9 why you concluded as a board member that  
10 it was a good deal?

11 A. First we had a process. It was  
12 negotiated with, you know, with  
13 knowledgeable people on the types of  
14 litigation claims that could be made on  
15 our side. It was negotiated with Kathy  
16 Patrick and her group who are  
17 knowledgeable on what claims they would  
18 bring forth, and, you know, we had -- we  
19 had independent, you know, our legal  
20 counsel evaluating what those claims could  
21 be versus the releases we would get and it  
22 was a good process.

23 MR. RAINS: You said first so I  
24 couldn't tell whether you were  
25 finished with your answer.

## **Exhibit C**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020 (MG)
Debtors.	

-----X

VIDEOTAPE DEPOSITION OF MARK RENZI

New York, New York

November 7, 2012

1:08 p.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27640



1 MARK RENZI

2 Most of the meetings with Kath Patrick  
3 that I was -- that I attended were at  
4 MoFo's offices. I actually believe all  
5 were at MoFo's offices.

6 Q. Did you make any part of the  
7 presentation to Ms. Patrick that day?

8 A. Yes.

9 Q. Did you make the entire  
10 presentation?

11 A. No.

12 Q. Who else made part of the  
13 presentation?

14 A. Excuse me. Marc Puntus was  
15 available from Centerview Partners.

16 Q. He was present?

17 A. I believe so. On the 25th, I  
18 believe so. Although he's not cc'd in  
19 this e-mail, I believe so.

20 Q. Okay. Looking at the  
21 presentation attached to your e-mail --

22 A. Yes.

23 Q. -- was this a document that you  
24 prepared?

25 A. Not in its entirety but portions

1 MARK RENZI

2 including the many audits that we  
3 described before, to understand what would  
4 be a reasonable allocation between the two  
5 legal entities that are reflected on this  
6 page.

7 Q. Mr. Renzi, I don't mean to  
8 misstate anything you've said but I seem  
9 to recall your saying that the 3 billion,  
10 4 billion and 6 billion dollar valuations  
11 that were used for purposes of this  
12 presentation to Ms. Patrick, came from  
13 Morrison Foerster and representatives from  
14 ResCap, is that true?

15 A. I can't remember specifically  
16 what I said but we collectively discussed  
17 what range to present for these  
18 negotiations.

19 Q. Was Mr. Devine a participant in  
20 that discussion?

21 A. Mr. Devine was involved in these  
22 meetings certainly. That specific  
23 discussion I'm sure he e-mailed what he  
24 thinks but I don't -- I don't work for  
25 Mr. Devine.

1 MARK RENZI

2 additional waterfall numbers to Kathy  
3 Patrick?

4 A. It would not be -- I don't work  
5 for Tim Devine.

6 Q. I didn't ask you that.

7 A. I'm not --

8 Q. Didn't you send this response to  
9 his request?

10 MR. RAINS: Let him finish his  
11 answer.

12 A. I wasn't done with my response.

13 Q. Go ahead.

14 A. Thank you. So you are asking me  
15 about chronology. So the chronology is --  
16 may I grab these other ones?

17 Q. You can grab anything you like.

18 A. Thank you. So you are asking me  
19 about an e-mail that went out at 6:00 p.m.  
20 on Sunday. In between 6:00 p.m. and  
21 10:00 p.m. there's approximately four  
22 hours. What I likely did because I don't  
23 work for Tim Devine is I talked to Gary  
24 Lee and Jamie Levitt and discussed what  
25 scenarios made sense to run. Tim Devine

## **Exhibit D**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

-----x

VIDEOTAPE DEPOSITION OF JOHN RUCKDASCHEL

New York, New York

November 8, 2012

9:37 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27643

1 JOHN RUCKDASCHEL

2 consider yourself a ResCap employee and  
3 not an Ally employee?

4 A. That is correct.

5 Q. Who did you report to as an  
6 in-house lawyer in structured finance?

7 A. Today I report to Tammy  
8 Hamzephour.

9 Q. Prior to the petition date who  
10 did you report to?

11 A. I reported to John Cooney who  
12 was in a different role from when I  
13 originally started at RFC. I reported to  
14 him up until sometime in the first quarter  
15 of 2012.

16 Q. Which corporate entity pays your  
17 salary?

18 A. The check is deposited  
19 electronically. And so I, all I get is a  
20 receipt. I ultimately don't know which  
21 entity is paying for it.

22 Q. So you don't know?

23 A. Well, I mean again I'm an  
24 employee of GMAC Mortgage and my client is  
25 ResCap.

1 JOHN RUCKDASCHEL

2 office.

3 Q. Is Tim Devine in that office  
4 also?

5 A. No.

6 Q. Is Bill Solomon in that office?

7 A. No.

8 Q. Is Tammy Hamzephour in that  
9 office?

10 A. Tammy splits her time between  
11 Fort Washington and Minneapolis.

12 Q. Do you report to Tim Devine?

13 A. I do not report to Tim Devine.

14 Q. So is it -- just so I make sure  
15 I'm understanding correctly, at all times  
16 you have been a ResCap employee as opposed  
17 to Ally?

18 A. You know, the -- we were a  
19 global and integrated legal department.  
20 I -- I don't know up until, you know,  
21 during the time that we were integrated,  
22 you know, where HR, you know, which  
23 spreadsheet my name sat on. But I do know  
24 that in twenty -- I believe it would be  
25 2011 or even 2010 it was made clear to me

1 JOHN RUCKDASCHEL

2 charge of deciding which department you  
3 would be in?

4 A. He's the general counsel of  
5 Ally.

6 Q. So is he your boss ultimately?

7 A. When we were an integrated legal  
8 department, we would report up the chain  
9 all the way to Bill.

10 Q. And when did you stop being an  
11 integrated legal department?

12 A. The representation for me was  
13 always ResCap. In the first quarter as  
14 the bankruptcy planning began to  
15 accelerate, the legal departments began to  
16 separate. But I think the important thing  
17 to remember is that -- who your client  
18 was. And the client for me was always  
19 ResCap.

20 Q. Do you remember a date when the  
21 integrated legal departments began to  
22 separate or was it a process?

23 A. It was a process because of the  
24 nature of preparing for a bankruptcy.

25 Q. So there wasn't a particular



1 JOHN RUCKDASCHEL

2 things were going, my only concern was who  
3 is my client. And my client was ResCap.

4 Q. I'm not sure you answered my  
5 question. My question was, was there any  
6 date by which you were told you should no  
7 longer report up the chain to Bill  
8 Solomon?

9 A. You know, that's a good  
10 question. I don't recall the official  
11 date on which I began reporting to Tammy  
12 Hamzephour. But there was a point where  
13 that was clear. And I think it was even  
14 before they sort of made some, sent around  
15 an e-mail saying, you know, we have these  
16 departments, these separate legal  
17 departments. I was reporting to her  
18 already I think, I think by March but I'm  
19 not sure.

20 Q. So there was at some point an  
21 e-mail that was sent around saying we have  
22 a different legal department?

23 A. Yes, I believe that's correct.

24 Q. And you don't recall the date of  
25 that e-mail?

1 JOHN RUCKDASCHEL

2 A. I think it was. I think it was  
3 sometime in April.

4 Q. Do you recall if it was the  
5 beginning of April or end of April?

6 A. I think it was, you know,  
7 towards the end of April. But again, I  
8 can't emphasize enough, the client is  
9 ResCap.

10 Q. And you were already reporting  
11 to Tammy Hamzephour starting in March?

12 A. I think that's right, yeah.

13 Q. So what is the title of your  
14 current position at ResCap?

15 A. Associate general counsel.

16 Q. Can you describe your  
17 responsibilities in your current position?

18 A. Primarily, you know, it's --  
19 I'll give you the sort of, the textbook  
20 answer, right, because the bankruptcy has  
21 sort of, you know, moved everything  
22 around. It's not like we are doing  
23 transactions today. But all things being  
24 equal, I would support, if we were  
25 actually engaging in, for example, loan

1 JOHN RUCKDASCHEL

2 A. Right, I don't know.

3 Q. Did you ever hear of anyone  
4 meeting with Kathy Patrick between  
5 November 2012 and April 2012?

6 A. No, I don't recall hearing of  
7 meetings.

8 Q. In April 2012 when you met with  
9 Kathy Patrick was that an in-person  
10 meeting?

11 A. Yes. It was here in New York.

12 Q. And who else was there?

13 A. It was at the offices of our  
14 lawyers at Morrison & Foerster. For  
15 ResCap it was the Morrison & Foerster  
16 lawyers, Tammy Hamzephour, Bill Thompson  
17 and myself. Tim Devine was there. And  
18 I -- I don't recall if -- I think Kirkland  
19 & Ellis, they sent a lawyer at one -- but  
20 I don't know if they were able to stay the  
21 whole time that's why I'm just not sure.

22 Q. Now, when Tim Devine was at this  
23 meeting in April 2012, was he representing  
24 Ally, ResCap or had there not yet been a  
25 division?

1 JOHN RUCKDASCHEL

2 met with her in the room.

3 Q. Did you subsequently meet with  
4 someone else from Gibbs & Bruns?

5 A. I think there was a subsequent  
6 meeting. It was prior to the bankruptcy.  
7 I assume it was sometime in May and I  
8 think it was their co-counsel bankruptcy  
9 lawyers.

10 Q. Was that Ropes & Gray?

11 A. Yes, yes.

12 Q. And who else -- who was at that  
13 meeting?

14 A. I don't recall all of the folks  
15 who were there. It was held at Morrison &  
16 Foerster's office as counsel to ResCap. I  
17 believe Tammy was there, I was there and I  
18 recall Tim was there. And maybe Bill  
19 Thompson but I'm not 100 percent sure on  
20 that.

21 Q. Did you understand that  
22 Mr. Devine was representing Ally at that  
23 point?

24 A. My understanding is in  
25 connection with the, these RMBS

1 JOHN RUCKDASCHEL

2 A. The --

3 MR. RAINS: Wait for a question.

4 THE WITNESS: Okay. Sorry.

5 Q. Did you understand Mr. Devine in  
6 that conversation to be representing Ally  
7 or ResCap?

8 A. As I said earlier, my  
9 understanding is that in the RMBS  
10 settlement discussions that Tim was  
11 representing Ally.

12 Q. Do you recall Mr. Devine's  
13 response to your indemnification issue  
14 that you raised?

15 A. I don't -- I don't recall the  
16 specifics.

17 Q. Do you recall if he agreed or  
18 disagreed?

19 A. I think he -- I think he agreed  
20 with me that it was -- it was a good idea  
21 but as I recall I think it wasn't  
22 something that we were -- that the parties  
23 wanted to, you know, have the deal fall  
24 apart just on a trustee indemnity issue.

25 Q. So it wasn't drop dead for the

## **Exhibit E**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TAMMY HAMZEPHOUR

New York, New York

November 13, 2012

9:43 a.m.

Reported by:

ERICA L. RUGGIERI, RPR

JOB NO: 27903

1 TAMMY HAMZEPHOUR

2 the Minneapolis office. Also my capital  
3 markets partner, John Ruckdaschel, was  
4 there, and Tim Devine from Ally.

5 Q. How long did the meeting last?

6 A. Three hours, maybe. I don't  
7 remember exactly.

8 Q. Can you please describe for me,  
9 in as much detail as you can remember,  
10 what the discussion was?

11 A. Ms. Patrick did most of the  
12 talking in the beginning of meeting. She  
13 talked to us a bit about who her investor  
14 clients were and their holdings that were  
15 represented across the spectrum of our  
16 securitization deals. She indicated that  
17 they believed they have claims against us  
18 and against Ally.

19 We talked about some of the work  
20 she had done in preparation for the  
21 meeting, and she mentioned that she had  
22 reviewed our prospectuses for the deals,  
23 that she had reviewed loan and servicing  
24 agreements, that she was familiar with the  
25 structure and the language and the



1 TAMMY HAMZEPHOUR

2 Ms. Patrick take place on April 25, 2012?

3 A. Yes.

4 Q. And was a waterfall presentation  
5 given to her during that meeting?

6 A. Yes.

7 Q. Did the presentation incorporate  
8 the 3, 4, 6 numbers recommended by  
9 Mr. Devine for the low, medium and high  
10 valuations of ResCap's RMBS exposure?

11 A. Yes, I believe it did.

12 Q. Did it also incorporate  
13 Mr. Devine's recommendation to use  
14 \$750 million rather than \$1 billion as  
15 AFI's potential contribution towards a  
16 settlement?

17 A. I believe there were a range of  
18 potential AFI contributions reflected.  
19 750 would have been the highest one in the  
20 range.

21 Q. Okay. Who attended the meeting  
22 on April 25th with Ms. Patrick?

23 A. There were a lot of people.  
24 Maybe as many as are in this room. I'll  
25 tell you the ones I can remember. Gary

1 TAMMY HAMZEPHOUR

2 Lee was there, Tim Devine, Mark Renzi from  
3 FTI, I believe John Ruckdaschel was  
4 present, Ms. Patrick. At least one, maybe  
5 two of her colleagues. I believe Marc  
6 Puntus or Sam Greene, one or the other,  
7 from Centerview Partners was there for at  
8 least part of the meeting. I don't  
9 remember if they stayed for the whole  
10 meeting. And there may have been one or  
11 more MoFo lawyers there, I don't recall.

12 Q. You were there?

13 A. Sure. I was there. I couldn't  
14 tell you who was in the room if I weren't  
15 there.

16 Q. Who led the meeting?

17 A. Gary Lee.

18 Q. Did you --

19 A. From a legal perspective Gary  
20 Lee. There were parts of the meeting that  
21 different people were handling so.

22 Q. What part, if any, did you  
23 handle?

24 A. I didn't take the lead on any of  
25 the issues other than we had a short

1 TAMMY HAMZEPHOUR

2 discussion on servicing standards. And we  
3 talked about part of Ms. Patrick's  
4 interest and that of her clients was in  
5 not only achieving a monetary settlement  
6 but also a settlement that would provide  
7 enhanced servicing standards for their  
8 investors' continuing interest in these  
9 loans.

10 Q. Who made the waterfall  
11 presentation?

12 A. I believe Mark Renzi from FTI  
13 did that.

14 Q. What was Mr. Devine's role  
15 during the meeting as you understood it?

16 A. What was his role?

17 Q. What did he do?

18 A. He was in the meeting. I don't  
19 remember specific parts of the  
20 conversation that he led. There were --  
21 there was discussion around the waterfall  
22 and the ranges of recoveries, losses, et  
23 cetera, that were the topic of discussion  
24 around the settlement. He participated in  
25 that.

1 TAMMY HAMZEPHOUR

2 different?

3 A. Yes.

4 Q. In what way?

5 A. Because there were circumstances  
6 under which we would, ResCap, the debtors  
7 would have settled with Ms. Patrick  
8 whether or not Ally was contributing in  
9 getting third-party releases. So our  
10 decision to settle wasn't contingent on  
11 that.

12 MR. KAUFMAN: Let's mark as the  
13 next exhibit two e-mails from  
14 Mr. Devine on May 1, 2012. Bates  
15 number RC 9019\_00048984.

16 (9019 Exhibit 81, two e-mails  
17 from Mr. Devine on May 1, 2012, Bates  
18 RC 9019\_00048984, marked for  
19 identification, as of this date.)

20 Q. Looking at the exhibit we have  
21 just marked. Did you receive each of  
22 these e-mails from Mr. Devine?

23 A. Yes.

24 Q. The subject of both e-mails was  
25 meeting with KP Steering Committee,

1 TAMMY HAMZEPHOUR

2 A. No.

3 Q. You weren't coordinating that,  
4 were you?

5 A. No. Gary Lee was coordinating  
6 that.

7 Q. Who was the one who was  
8 communicating with Ms. Patrick about the  
9 status of the documents?

10 MR. RAINS: Objection. Assumes  
11 facts not in evidence.

12 Q. To your knowledge?

13 A. Gary was communicating with her  
14 and Tim as well. I assume K&E was  
15 involved for Ally.

16 Q. Okay. Was Mr. Devine  
17 coordinating the negotiations with  
18 Ms. Patrick concerning the amount of the  
19 allowed claims she would get in a  
20 settlement?

21 A. No. He participated in those  
22 discussions.

23 Q. What was your participation in  
24 that discussion?

25 A. I was present for some of the

## **Exhibit F**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27973

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.  
3 I'm asking you to tell me at the time that  
4 you were preparing to provide this  
5 waterfall presentation to Ms. Patrick in  
6 connection with proposed settlement with  
7 her, wasn't it your understanding that AFI  
8 in return for whatever contribution it  
9 would be making to that settlement was  
10 going to require releases from both the  
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in  
13 response. One, I wasn't preparing the  
14 waterfall.

15 Two, we were not negotiating,  
16 Kathy Patrick and me -- Kathy Patrick and  
17 I with regard to whether or not the 750  
18 would be consideration for anything that  
19 the debtor received in connection with the  
20 resolution of a debtor and Kathy Patrick  
21 settlement agreement.

22 Q. Weren't those things all being  
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated  
25 with Kathy Patrick.



1 TIMOTHY DEVINE

2 Q. Yes.

3 A. No, she did not indicate that to  
4 me.

5 Q. Did she indicate that it was  
6 important?

7 A. Yes.

8 Q. Okay. What did she say about  
9 that?

10 A. Kathy Patrick understood that  
11 the negotiation of a dollar number between  
12 AFI and ResCap was going on separately  
13 from the discussions over the RMBS  
14 settlement. Notwithstanding that, she  
15 understood that she had no direct role  
16 or -- or standing to bargain for a number  
17 there since the number -- since that  
18 agreement was between the estate and Ally.  
19 She did care about the number and she told  
20 me that she cared about the number for the  
21 obvious reason that she wanted to maximize  
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she  
24 expressed an amount that she expected from  
25 AFI if she were going to proceed with a

1 TIMOTHY DEVINE

2 discussed or what was agreed to with  
3 respect to the court. Perhaps we  
4 should go off the record and discuss  
5 this and resolve it.

6 MR. KAUFMAN: Okay. Let's go  
7 off the record.

8 THE VIDEOGRAPHER: The time is  
9 2:48 p.m. and we are off the record.

10 (Brief recess.)

11 THE VIDEOGRAPHER: The time is  
12 2:51 p.m. and we are back on the  
13 record.

14 THE WITNESS: Thanks.

15 Q. Please look at the e-mail that  
16 you sent at 10:14 p.m. on May 7th which  
17 begins at the bottom of the first page of  
18 Exhibit 41 and continues over to the  
19 second page. Do you see that?

20 A. I see that e-mail, yeah.

21 Q. And did you send that e-mail?

22 A. Yes. It looks like I sent that  
23 e-mail.

24 Q. The first part of your e-mail  
25 was addressed specifically to Mark Renzi

1 TIMOTHY DEVINE

2 and Jeff Cancelliere, right?

3 A. Yes.

4 Q. And you said "KP needs defect  
5 rate. If we can persuade her team that  
6 they are using wrong severities, etc., and  
7 can preserve the defect rate, we can pick  
8 away at the \$10 billion."

9 Why did you believe Ms. Patrick  
10 needed a certain defect rate for her  
11 settlement?

12 A. I believe that she told me that  
13 her analysis and assessment of the loans  
14 at issue had indicated a certain defect  
15 rate. And notwithstanding the very  
16 natural process of negotiation I  
17 understood that she was reaching a point  
18 where she wasn't going to compromise with  
19 regard to what defect rate applied to this  
20 loan population based on the analysis of  
21 her team.

22 Q. What did you understand the term  
23 "defect rate" to mean?

24 A. It -- the simplest way to  
25 understand it is the rate at which loans

1 TIMOTHY DEVINE

2 Q. Did the information  
3 Mr. Cancelliere gave to you in this e-mail  
4 make you comfortable with an allowed claim  
5 at \$8.7 billion?

6 MR. BRYAN: Object to form.

7 A. What do you mean by comfortable?

8 Q. Willing to go along with it.

9 A. All right. So with that  
10 understanding in terms -- willing to go  
11 along with it in the context of the  
12 negotiation of a settlement by ResCap of  
13 an allowed claim based on that number?

14 Q. Yes.

15 A. I'm not sure as of 5/9/2012 at  
16 that time whether I was comfortable with  
17 it or not. Because it was only one term  
18 in a very complicated series of  
19 transactions. And it would have been  
20 within that much, much larger context as  
21 to whether or not I would have advised the  
22 client or not that that was a comfortable  
23 number.

24 Q. Were you representing ResCap on  
25 May 9th, 2012?

1 TIMOTHY DEVINE

2 A. In connection with the  
3 resolution with Kathy Patrick, no.

4 Q. Were you -- okay. So what you  
5 just said is incorrect, right? It had  
6 nothing to do with your advising the  
7 client on that number. I'm asking you  
8 whether you were comfortable as Ally's  
9 lawyer with an \$8.7 billion number based  
10 on the information Mr. Cancelliere gave to  
11 you in his May 9th e-mail?

12 MR. PRINCI: Objection as to  
13 form.

14 MR. BRYAN: Objection as to  
15 form.

16 A. That's how I understood your  
17 question.

18 Q. Right, okay. So that was the  
19 client, AFI?

20 A. Correct.

21 Q. Okay. Do you recall one way or  
22 another whether an \$8.7 billion allowed  
23 claim had been agreed to as of May 9th,  
24 2012, at 7:17 a.m.?

25 A. Do I recall that right now

1 TIMOTHY DEVINE

2 Q. Okay. Did there come a time  
3 when you learned who it was, what  
4 individuals were negotiating a settlement  
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned  
9 that.

10 Q. Did you learn it before or after  
11 the ResCap board gave its approval to the  
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you  
15 come to learn negotiated the settlement  
16 between AFI and ResCap?

17 A. Well, I may or may not be  
18 correct but you are asking me for my  
19 understanding. It was Mike Carpenter for  
20 AFI with the independents of the ResCap  
21 board.

22 Q. During the course of the  
23 negotiations with Ms. Patrick, up until  
24 May 9th, weren't you -- weren't you being  
25 kept advised about the progress of

1 TIMOTHY DEVINE

2 will support the \$8.7 billion allowed  
3 claim. There is no new Ally money. Hard  
4 stop at 750 plus 200 plus 100. Thanks,  
5 Tim." Right?

6 A. Yes. That's what it says.

7 Q. At the time you sent this e-mail  
8 to Mr. Lee, had the amount of AFI's  
9 contribution to a settlement been agreed  
10 upon to your knowledge?

11 A. As I said before, I don't know  
12 when that amount was agreed upon.

13 Q. Had Mr. Lee been pressing you  
14 for a larger contribution from AFI?

15 A. Mr. Lee knew because I told him  
16 that I was not going to negotiate that  
17 number with him. That I didn't have  
18 authority to negotiate it for him -- with  
19 him and that I didn't intend to do so.

20 Q. But you did make clear to him,  
21 did you not, in this e-mail, that there  
22 was not going to be more Ally money, isn't  
23 that what you say?

24 A. The e-mail here does not refer  
25 to -- it does not constitute an e-mail

1 TIMOTHY DEVINE

2 describe as the RMBS or put back  
3 litigation, and I'd include in that  
4 definition both the monoline claims that  
5 were in litigation and any put back claims  
6 that -- that might have been asserted?

7 A. The first substantial contact I  
8 had within my job duties with the mortgage  
9 business was in the summer of 2010 when  
10 the FHFA propounded 64 subpoenas across  
11 the industry and I was asked to coordinate  
12 the response to the subpoenas that were  
13 issued to the company.

14 Q. Did you supervise outside  
15 counsel with respect to the monoline  
16 litigation either MBIA or FGIC litigation?

17 A. Have I done that?

18 Q. Yes.

19 A. Yes.

20 Q. When you were representing AFI  
21 from the time of the October letter that  
22 Ms. Patrick sent to the signing of the  
23 settlement agreement, were you solely  
24 representing AFI or were you also  
25 representing ResCap during that time



1 TIMOTHY DEVINE

2 period from October forward?

3 A. Well, we should probably be  
4 careful with regard to what you mean by  
5 representing. The -- as I recall, the  
6 first communication from Kathy Patrick  
7 came in to Bill Solomon in his capacity as  
8 general counsel of Ally Financial, Inc.  
9 He responded by indicating to Ms. Patrick  
10 that Ally Financial, Inc. did not have  
11 exposure of the variety that she wanted to  
12 talk about settling. And referred her to  
13 Tammy Hamzephour, general counsel for  
14 ResCap.

15 What -- my participation in  
16 connection with meeting with Ms. Patrick,  
17 I think Mr. Sheeren was there at the first  
18 meeting in Minnesota, I don't recall  
19 exactly. But in any event, I was there in  
20 my capacity as chief counsel for  
21 litigation for ResCap, given that  
22 Ms. Patrick purported to represent clients  
23 who purported to have rep and warrant  
24 essentially contract claims against the  
25 contracting parties, all of whom were

1 TIMOTHY DEVINE

2 within the ResCap structure and none of  
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,  
5 if I understand, it took place sometime  
6 between October, November, December,  
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took  
9 place. I think we have had some testimony  
10 on it today. If there's a document we  
11 could refer to it.

12 Q. I'm going to try to do this  
13 without -- without taking the time to go  
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were  
17 representing ResCap in what I will call  
18 the Kathy Patrick negotiations with  
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would  
23 call them negotiations. So I think that  
24 term is going to end up being understood  
25 in a number of different ways. What --

1 TIMOTHY DEVINE

2 a compromise of those claims within the  
3 context of a ResCap filing.

4 Q. At any point?

5 A. Yeah. So I believe that she did  
6 at one point in the negotiations but now  
7 this was within the context of a potential  
8 ResCap filing at which time I was not  
9 representing ResCap in connection with a  
10 potential resolution of claims against the  
11 ResCap estate.

12 Q. Okay. So if I understand your  
13 testimony correctly, you initially started  
14 out representing ResCap and then at some  
15 point you were no longer representing  
16 ResCap. Could you explain to me when your  
17 role and responsibility changed?

18 A. I think you've slightly  
19 misunderstood but I don't blame you. At  
20 some point -- because it wasn't entirely  
21 clear, right. At some point -- look, when  
22 we started the discussions with Kathy  
23 Patrick, I was representing the ResCap  
24 entities in connection with the assertion  
25 that they had -- that Kathy Patrick did

1 TIMOTHY DEVINE

2 represent clients who did or did not under  
3 the relevant documents have contract  
4 claims against ResCap. And that was  
5 natural because I had been dealing with  
6 that kind of assertion of claim, although  
7 not by investors and trustees but rather  
8 by the monolines against the ResCap  
9 entities theretofore.

10 At some point ResCap began to  
11 consider a Chapter 11 restructuring. I  
12 did not represent ResCap at all in  
13 connection with this Chapter 11  
14 restructuring, unless you consider the  
15 nature of our discussions according to the  
16 common interest or joint defense privilege  
17 in which case that's why I don't blame you  
18 for misunderstanding the nature of what I  
19 just talked about. But so, yes, I did  
20 represent ResCap in connection with the  
21 sort of bilateral claim of Kathy Patrick's  
22 clients against the ResCap entities and  
23 rep and warrant. Once the context of the  
24 restructuring became a part of that  
25 dialogue, ResCap was represented by Gary

1 TIMOTHY DEVINE

2 Lee of MoFo. I never represented ResCap  
3 on a bankruptcy related resolution. At  
4 least unless you -- as I say, I did  
5 continue to advise ResCap in connection  
6 with plain sort of legal analysis on rep  
7 and warrant issues but not so much as  
8 would be implicated in connection with the  
9 filing.

10 Q. Thank you for that and let me  
11 try to make sure I understand correctly.  
12 To try to summarize. In the beginning of  
13 from October for some period of time in  
14 the initial stages that you've described  
15 as essentially information gathering  
16 stages, you were representing ResCap. By  
17 the end, by the April and May time period  
18 that we have looked at a variety of  
19 e-mails by that time period you were no  
20 longer representing ResCap, you would have  
21 solely been representing AFI, is that  
22 correct, am I bracketing the change in  
23 role correctly?

24 A. No. I think you are missing one  
25 part of it. But it's -- it's

1 TIMOTHY DEVINE

2 directionally correct. So first of all,  
3 the difficulty with the word  
4 "representing" given that there were no  
5 pleadings in the matter, nobody appeared  
6 as counsel of record, et cetera. So let's  
7 for a moment agree that the term  
8 "representing" is somewhat subject to a  
9 variety of definitions and understandings.

10 Q. I would use representing as  
11 representing in the context of the  
12 negotiations. Representing a client, be  
13 it AFI or ResCap, in dealing with  
14 Ms. Patrick or the Talcott Franklin group  
15 that came in at the end. If you  
16 understand that.

17 A. Uh-hum. So there -- there were  
18 certainly throughout the relevant period  
19 transactions and discussions,  
20 communications -- transactions meaning  
21 information exchange, et cetera, between  
22 the ResCap parties and Kathy Patrick on  
23 the one hand or Talcott Franklin on the  
24 other, which I assisted and advised ResCap  
25 in accomplishing.

1 TIMOTHY DEVINE

2 At the same time I was  
3 representing -- I was chief counsel to  
4 Ally as well so of course I was advising  
5 both ResCap and Ally in connection with  
6 the -- the claims that Kathy Patrick  
7 purported to make on behalf of those  
8 clients.

9 Q. When you were representing  
10 ResCap in the initial stages of this  
11 discussions and negotiations with  
12 Ms. Patrick, who did you report to at  
13 ResCap?

14 A. I certainly included Tammy  
15 Hamzephour in any discussions. She was  
16 general counsel to the ResCap entities. I  
17 had conversations with and gave advice to  
18 and took input from a variety of business  
19 clients.

20 Q. So in addition to Ms. Hamzephour  
21 you spoke to other not -- not in-house  
22 counsel but other business representatives  
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

1 TIMOTHY DEVINE

2 that you would no longer represent ResCap  
3 and solely be representing AFI?

4 A. I'm going to answer your  
5 question without revealing privileged  
6 communications. At some point it was  
7 determined that people performing  
8 functions like the one I was performing,  
9 which spanned across -- across the Ally,  
10 the nondebtor to the debtor line, should  
11 reorient so that they were aligned with  
12 one or the other. And that was a process  
13 that took place across the various  
14 business units and functions to the extent  
15 that there was any overlap.

16 Q. Do you know when that was?

17 A. With regard to my own role?

18 Q. Yes.

19 A. I don't know exactly when it  
20 was. I understand you would think I would  
21 have an exact date and hour. I don't.  
22 But because -- the reason I don't is  
23 because it's probably accurate to say that  
24 in some measure I continued to be a  
25 resource for the ResCap client even as



## **Exhibit G**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No.  
RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)  
Debtors.

-----x

H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27647-A

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 Q. What about K&E and Timothy  
3 Devine, did you view them as your lawyers  
4 or as AFI's lawyers or something else?

5 MR. PRINCI: Objection as to  
6 form.

7 A. AFI's lawyers.

8 MR. PRINCI: Excuse me one  
9 second. Just pause for one second,  
10 Tom.

11 MR. MOLONEY: Wait a second.  
12 You can just tell them that he needs  
13 to wait -- I'll put it on the record  
14 that you need to wait to allow  
15 Mr. Princi to state his objection.

16 I think we should note now that  
17 counsel is conferring with the  
18 witness, and it's not appropriate.

19 Q. What did you understand Timothy  
20 Devine's position to be?

21 A. I don't know Timothy Devine.

22 Q. Okay. Do you know whether or  
23 not he had a role in negotiating the RMBS  
24 deal with Ms. Patrick?

25 A. No.

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 Q. Did it concern you, if he was  
3 the chief of litigation for AFI, and he  
4 took the lead in the settlement  
5 negotiations and negotiated material terms  
6 of the RMBS with Kathy Patrick, without  
7 the involvement of Morrison & Foerster?

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Objection to form.

10 MR. MOLONEY: Noted.

11 Q. You may answer.

12 A. Generically speaking, yes, I  
13 would not understand that.

14 Q. As of May 2012, was there any  
15 real connection between the amount that  
16 the ResCap board was going to require AFI  
17 to contribute to a Chapter 11 resolution  
18 and the size of the RMBS claim that was  
19 negotiated with Ms. Patrick?

20 A. No.

21 Q. So at least as of May 2012,  
22 there was no additional cost to AFI in  
23 agreeing to a larger claim from  
24 Ms. Patrick's clients, in return for an  
25 AFI release, correct?

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2 MR. PIEDRA: Objection as to  
3 form.

4 MR. PRINCI: Misstates the  
5 facts.

6 A. Yes. I was going to say no,  
7 that's not the liability to ResCap.

8 Q. Isn't that the amount that  
9 ResCap is agreeing to pay, the settlement  
10 plan the ResCap group is agreeing to pay  
11 \$8.7 billion to settle the claim?

12 MR. PRINCI: Objection as to  
13 form.

14 A. That is correct, they are  
15 agreeing to pay that.

16 Q. Right. And why -- if their  
17 maximum exposure could only be \$4 billion,  
18 why would they agree to pay 8.7 billion?

19 MR. PRINCI: Objection as to  
20 form.

21 A. I don't know that the 4 -- the 4  
22 billion is not the maximum, that's just an  
23 estimate. This number is supposed to be,  
24 it is negotiated; it is a cap, in essence.

25 Q. Okay. You are saying the

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2 \$4 billion was an estimate, but this was a  
3 negotiated number, the 8.7?

4 A. Correct.

5 Q. Now, it wasn't determined by a  
6 court that ResCap was liable for \$8.7  
7 billion, right?

8 A. That is correct.

9 Q. So it was just determined by two  
10 human beings who negotiated a number, \$8.7  
11 billion, right?

12 MR. PRINCI: Objection as to  
13 form.

14 A. It was a negotiated number.

15 Q. Who were the two people who  
16 negotiated the number?

17 MR. PRINCI: Objection as to  
18 form.

19 A. Our advisors from MoFo, and  
20 Kathy Patrick, representing the investors.

21 Q. Now, the person who was  
22 representing you, your advisor for MoFo,  
23 you would think that they should negotiate  
24 a number that's consistent with what they  
25 think are their potential liabilities, if

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2 in the proceedings.)

3 THE VIDEOGRAPHER: The time is  
4 11:04 a.m. and we are back on the  
5 record.

6 Q. Are you ready, Mr. Mack?

7 A. Yes.

8 Q. Okay. Good. Looking still at  
9 95. I want to go on to under the key  
10 assumptions, the first key assumption,  
11 which says, REDACTED

12 REDACTED

13 REDACTED

14 REDACTED

15 REDACTED

16 Do you see that sentence?

17 A. Yes.

18 Q. Okay. Who negotiated that  
19 number, the 1 million -- 1 billion 50  
20 million dollar number?

21 MR. PRINCI: Objection as to  
22 form.

23 A. The Ally settlement was  
24 primarily Jonathan Ilany and myself. But  
25 at this point this was an assumption.

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2 This was not an actual number. It was not  
3 a fact.

4 Q. Okay. Did this represent the  
5 settlement that was negotiated between you  
6 and -- who represented Ally in the  
7 negotiations or AFI?

8 MR. PRINCI: Objection. You got  
9 two questions again, Tom.

10 Q. Let me ask the question who  
11 represented AFI in the negotiation of the  
12 settlement?

13 A. Mike Carpenter and Lenard  
14 Tessler.

15 Q. And just for the record, who are  
16 they?

17 A. Mike Carpenter is the CEO.  
18 Lenard Tessler is with Cerberus and I  
19 believe is the director of AFI.

20 Q. And you are saying this  
21 assumption number is not the same as the  
22 number that you negotiated by way of the  
23 settlement; is that correct?

24 A. At this point in time it was  
25 still an assumption. We did not have an



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2 discussions, not with counsel, but with  
3 any other board members, non-privileged  
4 discussions about why there was this  
5 disparity?

6 MR. PRINCI: Objection as to  
7 form. Misstates the record.

8 A. Again, I think that the  
9 8.7 billion and the 4 are apples and  
10 oranges. They are slightly different.  
11 The 8.7 billion represents a settlement of  
12 all claims. The 4 billion is an  
13 accounting-driven answer, involving an  
14 estimation.

15 Q. Was that the result of  
16 discussions you had with other people or  
17 your own opinion?

18 A. It was -- these were discussions  
19 held in audit committee.

20 Q. And do you recall any,  
21 specifically, any individuals who held  
22 that opinion, the opinion you just  
23 expressed about the difference?

24 A. Well, I think the audit  
25 committee presentations on accounting

## **Exhibit H**

REDACTED



REDACTED



REDACTED

